

**Final NPDES General Permit for Egg Production Operations  
in New Mexico, Oklahoma, and on Indian Lands in New Mexico and Oklahoma**

**Response to Comments**

During the comment period for the proposed permit, a comment letter was received from the National Resources Defense Council (NRDC). In addition, Oklahoma Department of Environmental Quality (ODEQ) and the Pueblo of San Juan conditionally certified the permit, and the New Mexico Environment Department (NMED) and the Pueblos of Sandia certified the permit and each included a list of comments. The comments and the responses to those comments as well as the conditions of certification are presented below.

**A. NRDC comments:**

In their comment letter, NRDC stated that they submitted comments to EPA in September, 2000, objecting to the UEP XL Project. In the comments on the proposed permit, NRDC said they were reiterating their objections to use of an XL project by EPOs and the inadequacy of a general permitting scheme for EPOs, as well as listing specific concerns with the proposed EPO general permit. These comments were edited due to the lengthy explanation included with the comments. Efforts were made, however, to capture the substance of the comments.

Comment 1 is in several parts and expresses concern that the proposed general permit is not an appropriate means to regulate large-scale egg producers in New Mexico and Oklahoma.

**Comment 1-a.** NRDC claims that since the Clean Water Act does not specifically list CAFOs, or any other point source except for municipal and industrial storm water, as a category that may be regulated by general permits, then EPA is not authorized by the Act or existing regulations to regulate CAFOs. EPOs do not meet the requirements of the regulations for general permits (40 CFR 122.28) because EPOs are not the same or substantially similar types of operations.

**Response 1-a.** EPA disagrees. 40 CFR 122.28(a)(2)(i) states that general permits may be written to regulate storm water point sources. 122.28(a)(2)(ii) goes on to state that general permits may be written to regulate one or more categories or subcategories of point sources other than storm water point sources if the sources within each category or subcategory all involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations or operating conditions, require the same or similar monitoring and, in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits. It is EPA's position that the egg producing operations eligible for coverage under this general permit do, indeed, fit the requirements of 122.28(a)(2)(ii).

**Comment 1-b.** Individual permits are needed to protect water quality. The general permit does not take into account the water quality standards and designated uses of the waters into which

EPOs may discharge. Water quality-based limits may be needed to protect outstanding state waters.

**Response 1-b.** As pointed out in the proposed permit's fact sheet, the permit does contain requirements designed to protect state water quality standards. Part II.A.1 of the permit prohibits the discharge of process wastewater pollutants during chronic rainfall events from a properly designed, constructed, maintained and operated facility. This means that the only discharges allowed by the permit are those overflows occurring as a result of a 25-year, 24-hour, or greater, rainfall event. Such an event should occur, on average, every 25 years. The fact sheet also points out additional requirements designed to protect water quality standards which include the requirement to develop and implement a CNMP and requirements addressing buffers, diversion of clean water, maintaining proper storage capacity, and rates and timing of land application of manure and wastewater.

Additional protection of water quality standards is provided by prohibiting certain EPOs from being covered by this general permit. Those EPOs include ones that have failed an audit by an independent third party; EPOs that are ineligible because of a past history of non-compliance; and new and/or significantly expanding EPOs that apply manure and/or wastewater to lands that are adjacent to water bodies listed under CWA 303(d) as impaired due to inadequate oxygen, excessive nutrients, suspended solids, turbidity and/or pathogens.

Further protection of Oklahoma water quality standards, including outstanding state waters, will be provided by coverage prohibitions required to be included by conditions of the 401 Water Quality Certification from the Oklahoma Department of Environmental Quality (see the Oklahoma conditional certification discussion, below).

**Comment 1-c.** Wet weather frequently saturates sprayfields producing huge amounts of discharges of animal waste and egg wash water to surface waters, which can lead to water quality impairment.

**Response 1-c.** The EPO general permit addresses land application (sprayfields) of manure and wastewater during wet weather conditions by containing a number of requirements to prevent off-site movement of contaminated water during wet weather conditions. These include the requirement to develop and implement a site-specific comprehensive nutrient management plan (CNMP) which, among other things, must address proper land application of manure and wastewater. The permit also prohibits application of manure and/or wastewater, unless approved conservation measures of a certified CNMP are in place, on land that is flooded, saturated with water, frozen or snow covered, on land with slopes greater than 6 %, and during the period of November 15 through April 15 on land with slopes greater than 3 %. The permit also prohibits land application during rainfall events and for 24 hours prior to a 60 % forecasted rainfall event of 1/4 inch or more.

**Comment 1-d.** EPA must require site-specific management practices tailored to the unique

conditions on individual EPO sites, thus the proposed general permit is not suitable.

**Response 1-d.** The EPO general permit requires site-specific management practices tailored to the unique conditions on a individual EPO site. It is called a comprehensive nutrient management plan. See Part II.B of the permit.

**Comment 1-e.** EPOs do not require the same or similar monitoring. Individual permits allow EPA to impose meaningful monitoring requirements that both protect water quality, and produce records and reports useful for gauging compliance. For example, most industries that are issued NPDES permit must monitor receiving waters and periodically report the results to EPA.

**Response 1-e.** EPA disagrees that the EPOs eligible for coverage under this general permit do not require the same or similar monitoring requirements. NRDC's statement that most industrial NPDES permits require instream monitoring by the permittee is not correct. Only very rarely, if at all, do EPA Region 6 NPDES permits require instream monitoring. Monitoring is required "end of pipe".

Comment 1 concludes with the statement that if EPA goes ahead with the proposed general permit, it should obligate each EPO to establish that it is not an endangerment to water quality before it is allowed to operate under the general permit. As discussed in the permit's fact sheet and in the above responses, the permit does include conditions, as required by 40 CFR 122.44(d), which are necessary to achieve State water quality standards.

Comment 2 is in several parts and claims the proposed general permit does not meet the Clean Water Act's public participation requirements.

**Comment 2-a.** The proposed general permit does not provide the public the opportunity for meaningful public participation, as required by the Clean Water Act and its regulations.

**Response 2-a.** EPA disagrees. 40 CFR 122.28(b) requires EPA-issued general NPDES permits to be issued in accordance with 40 CFR 124. Section 124.10 and 11 provide for public notice and opportunity for public comment and a public hearing on a proposed NPDES permit. For general NPDES permits, 124.10(c)(2)(i) requires the publication of a notice in a newspaper within the area affected by the facility and in the Federal Register. Region 6 complied with these requirements in proposing the egg producers NPDES general permit. The public notice was published in the Federal Register, Volume 66 No. 193 on October 4, 2001.

**Comment 2-b.** The public would receive notice that an EPO has passed an audit and intends to submit a notice of intent for general permit coverage. However, the proposed general permit merely requires the EPO to establish a point of contact at the facility for public inquiries.

**Response 2-b.** The permit requires substantially more than that. Parts I.E and III.E of the permit requires EPOs seeking coverage under the general permit to have an environmental

management system (EMS) in place which is consistent with EMS elements developed as part of the UEP XL Project. Before seeking permit coverage, EPOs must successfully complete an audit of their EMS by a qualified independent 3<sup>rd</sup> party organization. Information of the results of successful audits must be made available to the local community by placing a notice in the local newspaper, sending the notice directly to local stakeholders, and establishing a point of contact at the facility for public inquiries about the EPO. When submitting the notice of intent for permit coverage to EPA, the EPO must provide a copy of any written comments received from the community and indicate how these and any verbally obtained comments were addressed. Once a facility is accepted for coverage, annual third party audits must be conducted and the results of these audits must be made available to the public.

Comment 3 is in several parts and claims the screening criteria for ineligible entities are vague.

**Comment 3-a.** EPA should develop uniform evaluation criteria in order for the audits to achieve consistent results. The public should have access to these audits.

**Response 3-a.** The United Egg Producers XL Project Final Project Agreement contains a commitment that UEP will develop a 3<sup>rd</sup> party EMS auditing program. This program will include (1) necessary qualifications of auditors, (2) training to assure auditor competency, (3) protocols and other written tools used to conduct the audits, (4) sample audit findings reports to be used when sharing information with regulatory agencies and local stakeholders, and (5) the way in which UEP will oversee the operation of the auditing program. EPA's Office of Water will approve the audit curriculum and auditor certification programs. UEP plans to use certified third party auditors from America's Clean Water Foundation (ACWF) to verify EMS implementation. Part III.E of the permit ties in the UEP XL Project's Final Project Agreement, by reference.

**Comment 3-b.** NRDC agrees with the permit requirement that EPOs with past histories of noncompliance would not be eligible for general permit coverage.

**Response 3-b.** EPA appreciates NRDC's support of this requirement.

**Comment 3-c.** NRDC agrees that new or significantly expanding EPOs located adjacent to impaired waterbodies should not qualify for general permit coverage, but the restriction should also apply to existing EPOs.

**Response 3-c.** The permit restriction noted in Comment 3-c was added to comply with 40 CFR 122.4(i). When TMDL's and wasteload allocations are finalized for these impaired waterbodies, EPA can require, in accordance with Part I.F of the permit, existing EPOs to apply for and obtain individual permits if the wasteload allocations have more stringent requirements than are contained in the general permit. When an individual permit is issued and effective, general permit coverage for the EPO is automatically terminated.

**Comment 3-d.** The proposed permit states that EPOs having liquid manure handling systems

and/or unlimited continuous flow watering systems are not eligible for coverage, but the permit makes reference to liquid manure handling systems in a number of places in the permit.

**Response 3-d.** EPA Region 6 has determined that EPOs having liquid manure handling systems should have the opportunity to participate in this XL project. EPA is, therefore, removing the limitation in Part I.D.4 on permit coverage for EPOs having liquid manure handling systems and/or unlimited continuous flow watering systems. EPOs with liquid manure handling systems which meet the definition of a CAFO in 40 CFR 122, Appendix B, were required to be covered by a general NPDES permit that was issued by Region 6 in 1993, expired in 1998, and has been administratively extended. The current EPO general permit is more restrictive than the 1993 permit in a number of respects. These include the requirement to develop and implement a CNMP which includes more extensive requirements than the 1993 permit to assure good agricultural practices in land application of manure, the prohibition on wastewater holding facility overflows during chronic rainfall events, more extensive monitoring requirements, and the more restrictive general permit eligibility requirements of having to implement an EMS and not allowing coverage for new or significantly expanding EPOs on 303(d)-listed impaired waters.

There are new source performance standards (40 CFR 412.15) for EPO CAFOs having liquid manure handling systems, unlike the case for dry manure handling system EPOs. Since liquid manure EPOs eligible for coverage under this permit are, therefore, new sources, they are subject to the National Environmental Policy Act (NEPA) environmental review process. The permit will have language requiring such “wet” system EPOs to submit, in addition to the requirements in Part I.E of the permit, evidence that they have completed a NEPA review by submitting a copy of an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FNSI) issued by EPA Region 6.

**Comment 3-e.** The permit states that a violation of the EMS could result in the EPO being required to apply for an individual permit, but there does not appear to be any mechanism to determine whether an EPO is complying with its EMS.

**Response 3-e.** See Response 2-b, above for the mechanism. Annual third party audits of the EMS implementation are required.

**Comment 3-f.** To the extent possible, EPA should exclude all new and significantly expanding facilities from general permit coverage.

**Response 3-f.** EPA has done this by excluding from general permit coverage all new and significantly expanding EPOs located adjacent to waterbodies impaired, under CWA section 303(d), due to inadequate oxygen, excessive nutrients, suspended solids, turbidity and/or pathogens. As discussed in Response 1-b, above, the permit will exclude from general permit coverage EPOs, both new and existing, that are located on a number of waterbodies in Oklahoma, such as those designated for Sensitive Public and Private Water Supply, Outstanding

Resource Water and High Quality Water in Oklahoma's Water Quality Standards.

Comment 4 is in several parts and states that the monitoring, reporting, and notification requirements in the proposed general permit are inadequate.

**Comment 4-a.** An EPO should be required to report any discharge to the permitting authority within 24 hours, not just discharges that may endanger human health or the environment. Other categories of point sources require 24 hour oral notification for discharges and EPOs should be no exception.

**Response 4-a.** Part IV.A of the permit does require the permittee to notify EPA Region 6 in writing within five working days of any discharge of pollutants from the facility to a water of the U.S. EPA agrees that the permittee should also make oral notification to EPA Region 6 of any such discharge within 24 hours of learning of the discharge. Appropriate language has been added to Part IV.A of the permit.

**Comment 4-b.** At a minimum, the permit should require the waste, the soil at land application areas, groundwater near storage facilities, and surface waters passing through or adjoining the EPO to be monitored. The terms of the proposed permit merely require the permittee to inspect, monitor, and record the results of inspection and monitoring, but does not provide for any accountability because the permittee is not required to submit the results of any of this monitoring to the permitting authority.

**Response 4-b.** The permit does require extensive monitoring. The permittee must monitor and inspect the freeboard, structural integrity of liners and the absence of a hydrologic connection from the wastewater storage facilities; sample manure and wastewater to be land applied; monitor land application activities; monitor and analyze any overflows from the wastewater storage facilities; and conduct additional monitoring activities upon the request of EPA Region 6. All of this monitoring data and information as well as a copy of the CNMP must be kept at the EPO site and be available to EPA upon request. Additionally, the data collected from any overflows from the wastewater storage facilities must be submitted orally to EPA within 24 hours of learning of the event and in writing within 5 days. The permit also requires EPA to be notified of any substantial changes to the CNMP and requires submission of an annual certification to EPA that the CNMP has been reviewed to assess its adequacy in protecting water quality. It is EPA's judgement that these monitoring and reporting requirements are adequate to determine compliance with the permit requirements.

#### **B. Oklahoma Department of Environmental Quality conditional certification:**

ODEQ granted Clean Water Act 401 Water Quality certification on the condition that coverage under this general permit is not granted to egg production operations located or proposed to be located in the following areas:

The entire watershed of any State-designated Scenic River.

The entire watershed of any waterbody designated Outstanding Resource Water (ORW) in Oklahoma's Water Quality Standards.

Any waterbody designated High Quality Water (HQW) in Oklahoma's Water Quality Standards.

Any waterbody or watershed designated Sensitive Public and Private Water Supply (SWS) in Oklahoma's Water Quality Standards.

Any waterbody located within an area listed in Table 1, Appendix B of Oklahoma's Water Quality Standards.

Any waterbody listed in Table 2, Appendix B of Oklahoma's Water Quality Standards.

Part I.D of the permit will be changed to add the above conditions to the list of Limitations on Coverage.

### **C. Pueblo of San Juan conditional certification:**

The Pueblo of San Juan certified the permit subject to the following conditions:

Applicants that may affect the waters of the Pueblo of San Juan must notify the Pueblo of San Juan.

The applicant must conduct all monitoring activities required under this permit and submit a monitoring plan which is in accordance with the San Juan Pueblo Water Quality Monitoring Plan.

The above conditions will be added for egg production operations located on Pueblo of San Juan lands.

### **D. New Mexico Environment Department comments (not conditions of certification):**

**Comment 1.** In Part III.D of the proposed permit, EPA addresses requirements for land application activities not under the control of the permitted EPO operator. NMED is concerned that a number of feedlots (primarily dairies) in New Mexico supply process wastewater to crop fields which are in proximity to the feedlot but not owned by the permittee. It is unclear that EPA considers these land application areas to be under the operational control of the permittee. Although NMED is not aware that the current EPOs eligible for coverage under this general permit operate in this manner, NMED requests that EPA either clarify that these land application areas are under the operational control of the permittee, or include a requirement to meet the Part II.A requirements and to develop a CNMP for these land application activities.

**Response 1.** The only types of CAFOs eligible for coverage under this general permit are egg production operations. Nevertheless, the permit defines "land under operational control of the

EPO” as “any land owned, leased or otherwise controlled by EPO owner/operator for the purpose of land applying manure and/or wastewater generated at the EPO.”

**Comment 2.** Part III.B.5 of the permit states “where the facility is located in an impaired watershed, CNMPs should also be reviewed and amended, as needed, as part of the TMDL process.” NMED suggests the word “should” be changed to “must”.

**Response 2.** EPA Agrees and will make the change.

**Comment 3.** NMED requests that signed copies of discharge monitoring reports, data and reports, and all other submittals required by the permit also be submitted to:

Program Manager, Point Source Regulation Section, Surface Water Quality Bureau, New Mexico Environment Department, P.O. Box 26110, Santa Fe, New Mexico 87502

**Response 3.** EPA agrees and will make the addition.

**Comment 4.** Permit Part I.D.3 addresses EPOs that apply manure and/or wastewater to lands that are adjacent to water bodies listed under the Clean Water Act, Section 303(d). EPA should add the words “store and/or” before “apply”.

**Response 4.** EPA agrees and will make the addition.

**Comment 5.** Part IV.A of the fact sheet states “except when chronic or catastrophic rainfall events”, but Part IV.C.1 and V.B of the fact sheet and Part II.A.a of the permit prohibit discharges due to chronic events.

**Response 5.** The permit prohibits discharges during chronic rainfall events. This is a Clean Water Act water quality-based requirement. Part IV.A of the fact sheet discussed the BAT regulation at 40 CFR 412, Subpart A, which is less stringent than the water quality-based permit requirement.

**Comment 6.** Part I.B.2 of the permit requires audits to be conducted by an independent third party. NMED wonders whether EPA has some procedure for specifying auditor qualifications.

**Response 6.** As discussed in NRDC Comment and Response 3-a, above, the UEP XL Project Final Project Agreement contains a commitment that UEP will develop, and EPA’s Office of Water will approve, the third party EMS auditing program, including audit curriculum and auditor certification programs.

**Comment 7.** Part I.E.3 of the permit indicates that existing EPOs having a significant expansion must submit a CNMP and revised EMS to EPA 180 days before the expansion commences operation. NMED believes EPA intended that the EPO “have” these documents, but not “submit” them.



**Response 7.** The change will be made to clarify that these documents are not required to be submitted to EPA unless specifically requested.

**Comment 8.** Part III.A, Minimum Standard 9 states that land application rates “should” prevent application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrient and minimize water pollution. The wording should be changed to “must”.

**Response 8.** EPA agrees and will make the change.

**Comment 9.** Part III.C.4 and Part IV, Table 4-1 “Periodic Inspection and Monitoring Requirements” establishes requirements for egg washing wastewater storage structures. NMED believes maintaining precipitation gauges, recording precipitation data and monitoring and inspecting all wastewater control and retention facilities should be required at all wastewater control and retention facilities.

**Response 9.** EPA agrees and will make the changes.

**Comment 10.** Part IV.B.1 of the permit has a requirement to analyze samples of discharges from manure and/or wastewater storage structures for metals. This should be clarified.

**Response 10.** This requirement was taken from a model UEP permit which was developed as part of the XL Project. The purpose of this requirement is to require analysis of any discharges for BOD, TSS, nutrients and fecal coliform in order to determine if water quality standards may have been violated by such discharges. The metals and temperature monitoring requirement are of much less concern and will be omitted from the final permit.

#### **E. Pueblo of Sandia comments (not conditions of certification):**

**Comment 1.** Table III.A, Minimum Standard No. 5 of the permit requires preventing introduction of chemicals, such as pesticides, hazardous and toxic chemicals, into manure and wastewater storage structures for purposes of disposal. The Pueblo suggests the permittee be required to keep and maintain a list of chemicals used at the facility to allow inspectors to know what chemicals are on site. If a water quality problem does arise, chemicals on site could be checked.

**Response 1.** EPA agrees and will make the addition.

**Comment 2.** In Table III.A, Minimum Standard No. 7, the word “written” should be inserted into “Maintain a log” to make clear that written documentation is required.

**Response 2.** EPA agrees and will make the change.

**Comment 3.** The permit requires sampling land application soils to determine nutrient content

at least once every three years. This is too infrequent and should be changed to once per year.

**Response 3.** The requirement will be changed to once per year for any eligible EPOs located on Pueblo of Sandia lands.

**Comment 4.** The Pueblo of Sandia requests to be notified when and if any EPOs in the Middle Rio Grande apply for coverage under this permit.

**Response 4.** A requirement will be added that any EPOs located on the Middle Rio Grande must submit a copy of their Notice of Intent (NOI) for coverage to the Pueblo of Sandia in addition to the NOI required to be submitted to EPA Region 6.